

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OSCAR A. LEIVA,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner of
Social Security,

Defendant.

8:18CV461

**MEMORANDUM
AND ORDER**

This matter is before the Court on plaintiff Oscar A. Leiva's ("Leiva") request for attorney fees (Filing No. 24) pursuant to the Equal Access to Justice Act ("EAJA"), which authorizes an award of reasonable attorney fees in certain civil actions. *See* 28 U.S.C. § 2412(d)(1)(A). As relevant here, the EAJA provides that "a court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action . . . brought by or against the United States . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." *Id.* Leiva requests a total award of \$3,148.60, which represents 4.45 hours of attorney work in 2018 at a rate of \$201.60 per hour (\$897.12) and 11 hours of attorney work in 2019 at a rate of \$204.68 (\$2,251.48).

Defendant Andrew M. Saul, Commissioner of Social Security¹ ("Commissioner"), neither challenges Leiva's timely request for attorney fees under the EAJA nor argues the Commissioner's position was substantially justified. Indeed, the Commissioner supports Leiva's request for a fee award of \$3,148.60, noting that in accordance with *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010), any attorney-fee award under the EAJA should be

¹As the parties aptly note, Commissioner Saul was automatically substituted as a party for Acting Commissioner Nancy A. Berryhill upon succeeding her in office. *See* Fed. R. Civ. P. 25(d); 42 U.S.C. § 405(g) (survival of action).

payable to Leiva and is subject to administrative offset to satisfy any pre-existing federal debt he may owe.

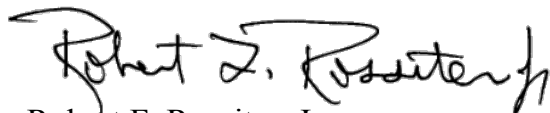
Having carefully reviewed the parties' submissions and the balance of the record in this matter, the Court accepts the parties' agreement that Leiva is a prevailing party in this action and is entitled to an award of attorney fees in the amount of \$3,148.60 to be paid by the Social Security Administration. The Court finds Leiva meets the statutory requirements for a fee award under the EAJA and his request is reasonable under the circumstances of this case. Accordingly,

IT IS ORDERED:

1. Plaintiff Oscar A. Leiva's request for attorney fees (Filing No. 24) pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), is granted.
2. Leiva is awarded attorney fees in the amount of \$3,148.60, subject to any administrative offset required to satisfy any pre-existing debt Leiva may owe to the United States.
3. The Social Security Administration shall make the fee award payable to Leiva and deliver the payment to Kappelman Law Firm at its address of record in this case.
4. A separate judgment will issue.

Dated this 28th day of October 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge